COMMODITY FUTURES TRADING COMMISSION
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94-21

DIVISION OF
TRADING AND MARKETS

January 24, 1994

Re: Request for Relief from Registration as a CPO and CTA

Dear :

This is in response to your letter dated November 25, 1992, as supplemented by letters dated January 4, 1993 and May 17, 1993 and telephone conversations with Division staff, in which you request in connection with the operation of the ("Partnership"), that the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") grant relief to the Partnership's general partner from registration as a commodity pool operator ("CPO") and a commodity trading advisor ("CTA").

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. The Partnership was formed as a private investment limited partnership and commenced operations in June of 1988. It was formed "to seek investments in the financial services, housing and real estate industries and to make and dispose of such investments."[1/] The Partnership wishes to hedge its investments through the use of financial futures contracts or options thereon. In this regard, you represent that the Partnership will engage in commodity-interest trading solely for hedging purposes within the meaning and intent of Rule 1.3(z)[2/] and that it will use no more than five percent of the Partnership's total assets for initial margin deposits and premiums for its commodity-interest positions.

1/ The assets of the Partnership currently include a savings and loan association, commercial and multi-family residential real estate, real estate service companies, a commercial loan portfolio purchased from the Resolution Trust Corporation, a servicer of commercial loans and a portfolio of credit card intangibles.

2/ Unless otherwise noted, Commission rules referred to herein are found at 17 C.F.R. Ch. I (1993).

You represent that the Partnership qualifies for the exclusion from the definition of an investment company under Section 3(c)(6) of the Investment Company Act of 1940 (the "ICA") "because 55% or more of its assets and net income after taxes for the last fiscal year came from majority-owned subsidiaries that were (i) banks, insurance companies, savings and loan associations, or similar institutions, or (ii) engaged in the business of purchasing or otherwise acquiring mortgages and other liens on or interests in real estate." Specifically, you represent that as of December 31, 1992, on a consolidated basis, 95.5% of the Partnership's assets and 98.1% of its net income after taxes came from these sources. The Partnership's interest in a federally regulated savings and loan association constitutes 93% of its total assets. Additionally, you represent that the Partnership is excluded from the "investment company" definition under Section 3(c)(1) of the ICA, which generally provides such an exclusion for companies whose outstanding securities are beneficially owned by no more than one hundred persons.

The Partnership's general partner is "X", a limited partnership (the "General Partner") whose sole business activity is to act as General Partner of the Partnership.[3/] The general partners of the General Partner are three corporations, each wholly-owned by one of three individuals with "long standing business and/or family relationships," and a fourth corporation which is jointly owned by these three individuals and a former business associate. This fourth corporation owns only a one percent interest in the General Partner and has no control over the management of the General Partner or the Partnership.

The limited partners of the General Partner are six current or former employees of an investment firm controlled by the individuals who control the General Partner. Each is registered with the National Association of Securities Dealers, Inc. or otherwise is licensed as a securities professional. You represent that none of the General Partner, its general partners (or the persons controlling them) or its limited partners are subject to any statutory disqualification under Sections 8(a)(2) or (8)(a)(3) of the Commodity Exchange Act, as amended (the "Act").[4/] Additionally, you represent that none of such persons or entities will act as a CPO or CTA other than to the Partnership without registering with the Commission as may be required under the Act.

[3/] You represent that because the General Partner has had fewer than 15 clients in the preceding 12 months and does not hold itself out generally to the public as an investment adviser, it is exempt from registration as an investment adviser under Section 203(b) of the Investment Advisers Act of 1940 (the "IAA").

[4/] 7 U.S.C. § 12(a)(2) or 12(a)(3) (1988 & Supp. IV 1992).

The Partnership currently has 25 limited partners (each a "Limited Partner" and collectively the "Limited Partners") which either are large institutional investors or highly sophisticated individuals with long-standing business relationships with one another. These Limited Partners include six insurance companies, two pension plans, three trusts, three business corporations, five limited partnerships and six sophisticated and wealthy individuals. You represent that each Limited Partner is an "accredited investor" under Rule 501 of the Securities Act of 1933. You further represent that the smallest commitment made by any Limited Partner to the Partnership is $500,000 and that each of the three Limited Partners who have made commitments at this minimum level are "qualified eligible participants" as defined in Rule 4.7.

Based upon the foregoing representations, the Division will not recommend that the Commission take any enforcement action against the General Partner if it fails to register as a CPO or a CTA in connection with its activities with respect to the Partnership. This position is based upon our understanding of, among others, your representations that: (1) 95.5 % of the Partnership's assets and 98.1 % of its net income after taxes for the last fiscal year came from majority-owned subsidiaries that were (i) banks, insurance companies, savings and loan associations, or similar institutions, or (ii) engaged in the business of purchasing or otherwise acquiring mortgages and other liens on or interests in real estate; (2) the Partnership's interest in a federally regulated savings and loan association comprises 93% of its total assets; (3) the Limited Partners are either large institutional investors or highly sophisticated individuals with long-standing business relationships with one another; (4) the Partnership will trade financial futures contracts or options thereon solely for bona fide hedging purposes within the meaning and intent of Rule 1.3(z); (5) the Partnership will commit no more than five percent of its total assets for initial margin deposits and premiums for its commodity-interest positions; (6) each Limited Partner qualifies as an "accredited investor" under Regulation D of the Securities Act of 1933; (7) the three individual Limited Partners with commitments to the Partnership at the level of $500,000 are "qualified eligible participants" under Rule 4.7; and (8) the General Partner will not act as a CPO or CTA except in its capacity as the general partner of the Partnership.[5/]

[5/] In light of the preceding representations in the text upon which we have based our CTA registration no-action position, it has been unnecessary for us to consider separately whether the Partnership should be counted as one "person" for the purpose of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (1988), as amended, and this letter should not be interpreted as reflecting any such consideration. Compare Rule 203(b)(3)-1 under the IAA.

The relief issued by this letter does not excuse the General Partner from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of Section 4o of the Act, 7 U.S.C. §6o, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations, and to all other provisions of Part 4.

This letter is based on the representations you have made to us as stated above and is strictly limited to those representations. Any different, changed or omitted facts or conditions might require us to reach a different conclusion.[6/] In this regard, we request that you notify us immediately in the event the Partnership's operations, including its commodity-interest trading restrictions and its membership composition, change in any way from those represented to us. Finally, this letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission.

If you have any questions regarding this letter, please contact me or Lawrence Eckert, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Andrea M. Corcoran
Director

[6/] For example, in the event the Partnership accepted additional limited partners, the position taken herein may no longer obtain.